

PROPOSED

6 NYCRR Part 368

Product Stewardship
and Product Labeling

6 NYCRR Part 368 Recycling Emblems is repealed and a new 6 NYCRR Part 368 is adopted to read as follows:

PART 368

PRODUCT STEWARDSHIP AND PRODUCT LABELING

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SUBPART 368-1

RECYCLING LABELING

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 27-0717)

368 - 1.1 Purpose and applicability

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Section 368-1.1 Purpose and applicability

The purpose of this Subpart is to establish standards for the use of the terms “recyclable”, “recycled” and “reusable” in conjunction with or independently from the term “New York State” on products sold or offered for sale in the state. This Subpart applies to any person who uses these terms directly on or in the promotion, marketing, or advertisement of a product sold or offered for sale in New York State.

Section 368-1.2 Definitions

The following terms have the following meanings when used in this Subpart.

(a) 'Department' means the New York State Department of Environmental Conservation.

(b) 'Package' means a container, vessel, covering, wrapping, box, or device in which a product is sold or offered for sale.

(c) 'Person' means any individual, public or private corporation, political subdivision, government agency or subdivision thereof, authority, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(d) 'Product' means that which is created as a result of a manufacturing process.

Section 368-1.3 Labeling standards

No person may sell, promote, market, advertise, or offer for sale a product in New York State labeled with the terms "recycled" or "recyclable" or "reusable", whether used in conjunction with the term "New York State" or used independently, unless the term is used in conformance with the applicable standard in subdivisions (a) to (c) of this section.

(a) Recyclable. A person may only use the term "recyclable" on a product or package that is in conformance with section 260.12 of the Federal Trade Commission's "Guides for the Use of

Environmental Marketing Claims” published in 16 CFR Part 260, as incorporated by reference in section 368-1.4 of this Subpart.

(b) Recycled. A person may only use the term “recycled” on a product or package that is in conformance with section 260.13 of the Federal Trade Commission's “Guides for the Use of Environmental Marketing Claims” published in 16 CFR Part 260, as incorporated by reference in section 368-1.4 of this Subpart.

(c) Reusable. A person may only use the term “reusable” on a product or package that is in conformance with section 260.14 of the Federal Trade Commission's “Guides for the Use of Environmental Marketing Claims” published in 16 CFR Part 260, as incorporated by reference in section 368-1.4 of this Subpart.

Section 368-1.4 References

The following documents are incorporated by reference in this Subpart and are on file with the New York State Department of State. The documents are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and for inspection and copying at the department’s office located at 625 Broadway, Albany, New York 12233.

Code of Federal Regulations (CFR):

(a) 16 CFR - Title 16 of the Code of Federal Regulations (Commercial Practices), Chapter I, Subchapter B, Part 260 Guides for the Use of Environmental Marketing Claims, section 260.12 Recyclable Claims, October 11, 2012.

(b) 16 CFR - Title 16 of the Code of Federal Regulations (Commercial Practices), Chapter I, Subchapter B, Part 260 Guides for the Use of Environmental Marketing Claims, section 260.13 Recycled Content Claims, October 11, 2012.

(c) 16 CFR - Title 16 of the Code of Federal Regulations (Commercial Practices), Chapter I, Subchapter B, Part 260 Guides for the Use of Environmental Marketing Claims, section 260.14 Refillable Claims, October 11, 2012.

Section 368-1.5 Severability

If any provision of this Subpart or its application to any person or circumstance is held to be invalid, the remainder of this Subpart, and the application of that provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SUBPART 368-2

MERCURY-ADDED CONSUMER PRODUCTS LABELING

(Statutory authority: Environmental Conservation Law §§ 1-0101, 3-0301, 27-2103, 27-2111)

368 - 2.1 Purpose and applicability

368 - 2.2 Definitions

368 - 2.3 Labeling standards

368 - 2.4 Alternative labeling approval

368 - 2.5 Severability

Section 368-2.1 Purpose and applicability

The purpose of this Subpart is to establish standards for the labeling of mercury-added consumer products. This Subpart applies to any person who sells or offers for sale any mercury-added consumer product in New York State.

Section 368-2.2 Definitions

The following terms have the following meanings when used in this Subpart.

(a) 'Consumer' means any person who purchases a mercury-added consumer product for use other than resale.

(b) 'Department' means the New York State Department of Environmental Conservation.

(c) 'Distributor' means any person who sells mercury-added consumer products to a retailer in New York State, including any manufacturer who sells to retailers in the state.

(d) 'Manufacturer' means any person who manufactures mercury-added consumer products.

(e) 'Mercury-added consumer product' means any device or material into which elemental mercury or mercury compounds are intentionally added during the device's or material's formulation or manufacture, and in which the continued presence of mercury is required to provide a specific characteristic, appearance or quality, or to perform a specific function. This term includes, but is not limited to, mercury-containing:

(1) thermostats;

(2) thermometers;

(3) switches, whether individually or as part of another product;

(4) medical or scientific instruments;

(5) electrical relays and other electrical devices;

(6) lamps; and

(7) batteries sold to consumers, not including button batteries.

(f) 'Package' means a container, vessel, covering, wrapping, box, or device in which a product is sold or offered for sale to a consumer.

(g) 'Person' means any individual, public or private corporation, political subdivision, government agency or subdivision thereof, authority, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(h) 'Retailer' means any person that sells or offers for sale new mercury-added consumer products in New York State through any means including, but not limited to, transactions conducted through retail sales outlets, mail, catalogs, the telephone, the internet, or any electronic means to consumers for purposes other than resale.

Section 368-2.3 Labeling standards

(a) A mercury-added consumer product, and its package, sold or offered for sale in New York State by a distributor or retailer must be labeled by the manufacturer in accordance with the provisions of this section, unless an alternative label has been approved by the department in accordance with section 368-2.4 of this Subpart. The label must:

(1) clearly and conspicuously inform the consumer that mercury is present in the product and that the product cannot be disposed of or placed with waste destined for disposal;

(2) be conspicuous to the consumer prior to the purchase of the product and during the installation and removal of the product; and

(3) be affixed to the product and composed of a material sufficiently durable to remain legible and affixed for the useful life of the product.

(b) Automobile manufacturers meet the labeling requirements of this section, with respect to either original equipment or service parts, if the automobile bears a label on the doorpost that lists the mercury-added components present in the vehicle. Such label shall, to the largest extent possible, be consistent with labeling provisions of other states. An automobile manufacturer may apply to the department for approval of an alternative to the labeling requirement for providing presale notification of mercury content.

Section 368-2.4 Alternative labeling approval

(a) A manufacturer may request, in writing, that the department approve alternative labeling, including package labeling, for mercury-added consumer products. A manufacturer must submit the following to the department with its request:

(1) documentation demonstrating that the proposed alternative label is approved for use in another state, if applicable;

(2) documentation that a product or class of products cannot reasonably be labeled to comply with the requirements of section 368-2.3 of this Subpart; and

(3) an alternative labeling plan that describes how the proposed alternative label will address, at a minimum, the intent of each of the provisions identified in subdivision 368-2.3(a) of this Subpart.

(b) Approvals for alternative labeling are valid for four years and may be renewed by the department upon written request of the manufacturer. A renewal request must be submitted at least 90 days prior to the date of expiration.

Section 368-2.5 Severability

If any provision of this Subpart or its application to any person or circumstance is held to be invalid, the remainder of this Subpart, and the application of that provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SUBPART 368-3

ELECTRONIC WASTE COLLECTION, RECYCLING AND REUSE

(Statutory authority – Environmental Conservation Law sections 1-0101, 3-0301, 27-2615, title 26 of article 27)

368 - 3.1 Purpose, applicability, and transition

368 - 3.2 Definitions

368 - 3.3 Manufacturer requirements

368 - 3.4 Collective requirements

368 - 3.5 Electronic waste acceptance program

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368 - 3.7 Retailer requirements

368 - 3.8 Electronic waste collection site requirements

368 - 3.9 Electronic waste consolidation facility requirements

368 - 3.10 Electronic waste recycling facility requirements

368 - 3.11 Electronic waste collector requirements

368 - 3.12 Electronic waste collection event requirements

368 - 3.13 Waste transporter and waste management facility requirements

368 - 3.14 Severability

Section 368-3.1 Purpose, Applicability, and Transition

(a) Purpose and Applicability. This Subpart regulates the collection, storage, and disposal of electronic waste and applies to all covered electronic equipment (CEE) manufacturers, collectives, retailers, and consumers. This Subpart also applies to any electronic waste collection site, electronic waste consolidation facility, electronic waste recycling facility, electronic waste collector, person conducting an electronic waste collection event, waste transporter, solid waste management facility, and hazardous waste management facility.

(b) Transition. Any person who was registered with the department prior to the effective date of this regulation must update its online registration form and comply with all applicable requirements of this Subpart within 180 days after the effective date of this Subpart.

Section 368-3.2 Definitions

The following terms have the following meanings when used in this Subpart.

(a) ‘Acceptance standard’ means the minimum amount of electronic waste that a manufacturer must accept for a calendar year in its electronic waste acceptance program through registered program partners to avoid a recycling surcharge as prescribed in subdivision (b) of section 368-3.6 of this Subpart.

(b) ‘Business consumer’ means a for-profit entity which has 50 or more full-time employees or a not-for-profit corporation with 75 or more full-time employees, other than a not-for-profit corporation designated under Internal Revenue Code (26 USC) § 501(c)(3), which is incorporated by reference as Title 26 of the United States Code (Internal Revenue Code), Subtitle A (Income Taxes), Chapter 1 (Normal Taxes and Surtaxes), Subchapter F (Exempt Organizations), Part I (General Rule), Section 501 (Exemption from tax on corporations, certain trusts, etc.), December 20, 2019, and is on file with the New York State Department of State, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and available for inspection and copying at the department’s office located at 625 Broadway, Albany, New York 12233.

(c) ‘Cathode ray tube’ or ‘CRT’ means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

(d) ‘Collective’ means an organization established to administer an electronic waste acceptance program on behalf of one or more manufacturers.

(e) 'Computer' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing a logical, arithmetic, or storage function, and may include both the central processing unit and the monitor.

(1) 'Computer' includes, but is not limited to:

(i) a laptop computer;

(ii) a desktop computer;

(iii) a tablet computer;

(iv) a notebook computer;

(v) a workstation computer;

(vi) an e-reader;

(vii) an all-in-one computer;

(viii) an interactive flat panel display with built-in processor;

(ix) a mini computer;

(x) a thin client computer;

(xi) virtual reality headset with built-in processor; or

(xii) other similar devices as determined by the department.

(2) 'Computer' does not include:

(i) an automated typewriter or typesetter;

(ii) a portable hand-held calculator;

(iii) a portable digital assistant;

(iv) a server; or

(v) other similar devices as determined by the department.

(f) 'Computer peripheral' means:

(1) a monitor;

(2) an electronic keyboard;

(3) an electronic mouse or similar pointing device;

(4) external hard drive;

(5) a facsimile machine;

(6) a document scanner weighing less than 100 pounds;

(7) a printer weighing less than 100 pounds intended for use with a computer; or

(8) other similar devices as determined by the department.

(g) 'Consumer' means a person located in the state who owns or uses CEE, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school, board of

cooperative educational services, or governmental entity. 'Consumer' does not include an entity involved only in a wholesale transaction between a distributor and retailer.

(h) 'Covered electronic equipment' or 'CEE' means:

(1) one or more of the following, and includes any cable, cord, or wiring permanently affixed to or incorporated into the equipment:

(i) a computer;

(ii) a computer peripheral;

(iii) small electronic equipment;

(iv) a small-scale server;

(v) a CRT; or

(vi) a television.

(2) CEE does not include:

(i) any motor vehicle or any motor vehicle part;

(ii) a camera or video camera;

(iii) a portable or stationary radio;

(iv) household appliances such as a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, oven, range, or dishwasher;

(v) equipment that is functionally or physically a permanent part of a larger piece of equipment intended for use in an industrial, research and development, or commercial setting;

(vi) security or anti-terrorism equipment and its components specifically manufactured and marketed for residential or commercial security or anti-terrorism purposes;

(vii) a monitoring and control instrument or system;

(viii) a thermostat;

(ix) a hand-held transceiver;

(x) a telephone of any type, including a cellular, wireless, or smart phone device;

(xi) a portable digital assistant or similar device;

(xii) a calculator;

(xiii) a global positioning system (GPS) receiver or similar navigation device;

(xiv) a server other than a small-scale server;

(xv) a cash register or retail self-checkout system;

(xvi) stand-alone storage equipment intended for use in industrial, research and development or commercial settings;

(xvii) commercial medical equipment that contains within it a CRT, a flat panel display, or similar video display device, and is not separate from the larger piece of equipment;

(xviii) other medical devices, as that term is used in 21 USC § 321(h) of the Federal Food, Drug, and Cosmetic Act, which is incorporated by reference as Title 21 of the United States Code (Food and Drugs), Chapter 9 (Federal Food, Drug, and Cosmetic Act), Subchapter II (Definitions), Section 321 (Definitions; generally), December 13, 2016, and is on file with the New York State Department of State, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and available for inspection and copying at the department's office located at 625 Broadway, Albany, New York 12233.

(xix) toys that do not otherwise meet the definition of CEE; or

(xx) other similar devices as determined by the department.

(i) 'Department' means the New York State Department of Environmental Conservation.

(j) 'ECL' means chapter 43-B of the Consolidated Laws of the State of New York, entitled the Environmental Conservation Law.

(k) 'Electronic waste' means CEE that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling

system. 'Electronic waste' includes broken or damaged CEE unless only the case, shell, or other enclosure of the CEE remains after incorporated assemblies, sub-assemblies, components, materials, wiring, circuitry, and commodities have been completely removed.

(l) 'Electronic waste acceptance program' or 'acceptance program' means a program established and maintained by a manufacturer or collective to fulfill manufacturers' requirements and obligations under subdivision 5 of ECL § 27-2605.

(m) 'Electronic waste collection site' or 'collection site' means a site at a fixed or temporary location at which electronic waste is accepted from consumers and stored for more than five days, consecutive or not, in a calendar year before the waste is sent off-site for recycling or reuse. Electronic waste collection sites include, but are not limited to, the following sites located within the state that have agreed to accept electronic waste from consumers:

(1) dedicated sites and facilities for the acceptance of electronic waste;

(2) retail stores and outlets;

(3) municipal or private electronic waste collection sites; and

(4) not-for-profit donation sites.

(n) 'Electronic waste collection event' means a single or multiple day collection activity conducted by any person at a location where electronic waste is accepted on a predetermined day and time and temporarily stored for a total of five days or less, consecutive or not, in a calendar year.

(o) 'Electronic waste collector' or 'collector' means a person who accepts through mail-back, or otherwise receives electronic waste from a consumer, but is not registered as an electronic waste collection site, consolidation facility, or recycling facility. A collector does not mean a person solely transporting electronic waste.

(p) 'Electronic waste consolidation facility' or 'consolidation facility' means a facility that receives and stores electronic waste for the purpose of organizing, categorizing, or consolidating items of electronic waste before the waste is transported to an electronic waste recycling facility. 'Electronic waste consolidation facility' includes, but is not limited to, a facility of a broker acting as an intermediary between an electronic waste buyer and seller, and a regional center at which electronic waste is organized, categorized, or consolidated after being transported from an electronic waste collection event, electronic waste collection site, or other electronic waste consolidation facility.

(q) 'Electronic waste recycling facility' or 'recycling facility' means a facility at which electronic waste is recycled.

(r) 'Label' means a permanent marking conveying information that is attached, printed, engraved, or incorporated in any other permanent way on the surface of CEE that is obvious and visible to users of the CEE.

(s) (1) 'Manufacturer' means a person who:

(i) assembles or substantially assembles CEE for sale in the state;

(ii) manufactures CEE under its own brand name or under any other brand name for sale in the state;

(iii) sells, under its own brand name, CEE in the state;

(iv) owns a brand name that it licenses to another person for use on CEE sold in the state;

(v) imports CEE for sale in the state; or

(vi) manufactures CEE for sale in the state without affixing a brand name.

(2) 'Manufacturer' does not include a person:

(i) who assembles or substantially assembles, and sells less than one thousand (1,000) units of CEE annually in the state; or

(ii) whose primary business is the sale of CEE which is comprised primarily of rebuilt, refurbished or used components.

(t) 'Manufacturer's brand' or 'brand' means a manufacturer's name, brand name, or brand label and all manufacturer's names, brand names, and brand labels for which the manufacturer has a legal right or interest, including those names, brand names, and brand labels of companies that have been acquired by the manufacturer or in which the manufacturer asserts a legal interest such as trademark, license, service mark, or patent.

(u) 'Material change' means a change to information required to be submitted to the department on an online registration or annual report form including, but not limited to, changes in contact information, types and brands of CEE, the acceptance program or acceptance methods, public education program details, recycling methods employed, and downstream vendors.

(v) 'Monitor' means a separate visual display device, whether sold separately or together with a computer central processing unit, and its case, interior wires, and circuitry.

(w) 'Person' means any individual, public or private corporation, political subdivision, government agency, school, institution, university, authority, department or bureau of the state, municipality, industry, partnership, association, firm, trust, estate, or any other legal entity.

(x) 'Premium service' means a service for which a consumer may be charged, including:

(1) any equipment or data security service, including, but not limited to, data wiping, data transfer, and hard drive removal and shredding;

(2) refurbishment for reuse by a consumer;

(3) a special pickup request when a reasonably convenient method of acceptance is available to the consumer;

(4) collection and recycling of CEE that was intentionally broken, damaged, or intentionally had components partially removed, including incorporated assemblies, sub-assemblies, materials, wiring, circuitry, and commodities; or

(5) other service as determined by the department.

(y) 'Program partner' means any registered electronic waste collection site, electronic waste consolidation facility, electronic waste recycling facility, or electronic waste collector that has an agreement in place to accept electronic waste as part of an electronic waste acceptance program.

(z) 'Recycle' means to separate, dismantle, or process the materials, components, or commodities contained in electronic waste for the purpose of preparing the materials, components, or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis, or other means. Recycling includes the manual and mechanical separation of electronic waste to recover materials, components, or commodities contained therein for reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for recycling those components.

(aa) 'Retailer' means a person who sells CEE to a person in the state through any means including, but not limited to, transactions conducted through retail sales outlets, mail, catalogs, the telephone, the internet, or any electronic means. Retailer does not include a person who sells or offers for sale fewer than ten items of CEE during a calendar year.

(bb) 'Reuse' means the use of electronic waste that is either:

(1) removed from the waste stream for use for the same purpose for which it was manufactured, including the continued use of whole systems or components, and tested and certified to be in good working order; or

(2) removed from the waste stream, refurbished for use for the same purpose for which it was manufactured, and tested and certified to be in good working order.

(cc) 'Sell' or 'sale' means:

(1) any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to:

(i) transactions conducted through retail sales outlets;

(ii) transactions conducted through catalogs;

(iii) transactions conducted through mail;

(iv) transactions conducted through the telephone;

(v) transactions conducted through the internet;

(vi) transactions conducted through any electronic means; or

(vii) the transfer of new or used equipment that has been refurbished by its manufacturer or manufacturer-approved party and that is offered for sale by a manufacturer or retailer.

(2) 'Sell' or 'sale' does not include:

(i) consumer-to-consumer second-hand transfer of CEE;

(ii) the transfer of used CEE;

(iii) a lease of CEE; or

(iv) wholesale transactions among a manufacturer, wholesaler, and retailer.

(dd) 'Small electronic equipment' means:

(1) any portable battery-powered digital music player with memory capability;

(2) a video cassette player or recorder;

(3) a digital video disc player or recorder;

(4) a digital video recorder;

(5) a digital converter box, router, or modem;

(6) an internet streaming device;

(7) a cable or satellite television receiver (excluding the satellite dish);

(8) an electronic or video game console (including handheld game consoles); or

(9) other similar devices as determined by the department.

(ee) ‘Small-scale server’ means a device that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for computers. To be considered a small-scale server, the device must:

(1) be designed in a pedestal, tower, or other form factor similar to those of desktop computers where all data processing, storage, and network interfacing is contained within one box or product;

(2) be capable of supporting only a single processor;

(3) be designed to operate 24 hours per day, seven days a week, with minimal unscheduled downtime (on the order of hours/year);

(4) be capable of operating in a simultaneous multi-user environment serving several users through networked client units; and

(5) be designed for an industry accepted operating system.

(ff) 'Television' means a display system containing a CRT or any other type of display primarily intended to receive video programming via broadcast, cable, or satellite transmission, having a viewable area greater than four inches when measured diagonally.

(gg) 'Visual display device' means a device using a CRT, liquid crystal display, light emitting diode, gas plasma, digital light processing, or other image projection or display technology, having a viewable area greater than four inches when measured diagonally, and includes, but is not limited to:

- (1) monitor;
- (2) digital picture frame;
- (3) interactive flat panel display;
- (4) smart display; or
- (5) other similar device as determined by the department.

Section 368-3.3 Manufacturer requirements

No manufacturer, as defined in section 368-3.2 of this Subpart, may sell or offer for sale CEE in the state unless it has registered with the department and is in compliance with the requirements of this section.

(a) Registration.

- (1) Online registration form. A manufacturer must register with the department by completing and submitting an online registration form, as prescribed by the department.

(2) Manufacturer registration fee. The following persons must submit a one-time, non-refundable registration fee of five thousand dollars (\$5,000) to the department at the time of registration:

(i) any manufacturer operating an individual electronic waste acceptance program; or

(ii) any manufacturer previously registered as participating in a collective acceptance program that intends to operate an individual acceptance program.

(3) Acceptance by the department. A manufacturer's registration is effective upon receiving notification of approval by the department. To receive approval from the department, the manufacturer must demonstrate compliance with the requirements of paragraphs (1) and (2) of this subdivision.

(4) Registration update. A manufacturer must update its online registration form within 30 days of a material change to any registration information provided to the department.

(5) Manufacturer sales data. A manufacturer must provide state sales data to the department in its registration. A manufacturer that cannot provide accurate state sales data must explain why such data cannot be accurately provided and may estimate state sales data by:

(i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state; or

(ii) making a request, supported by sufficient documentation, to use an alternative method to determine state sales data, subject to approval by the department.

(b) Compliant electronic waste acceptance program. A manufacturer must create and maintain an effective electronic waste acceptance program that is both convenient and continuous for the collection, handling, transportation, and recycling or reuse of consumer electronic waste at no cost to consumers. A manufacturer's electronic waste acceptance program must also be consistent with the requirements of section 368-3.5 of this Subpart, including, but not limited to, brand acceptance and one-for-one acceptance. The acceptance program must not discourage or restrict continuous and convenient acceptance of electronic waste, and a manufacturer must provide a detailed description of the acceptance program at the time the registration form is submitted to the department.

(c) Acceptance standard. The acceptance standard is the minimum amount of electronic waste a manufacturer must accept for a calendar year, through the registered and compliant program partners indicated in its electronic waste acceptance program, to avoid a recycling surcharge as prescribed in section 368-3.6 of this Subpart. A manufacturer must maintain a continuous acceptance program and must not cease the acceptance of electronic waste once it attains its

acceptance standard in any year. The department will annually provide each manufacturer with its acceptance standard for the calendar year in accordance with ECL § 27-2603(4).

(d) Annual reporting. A manufacturer must annually report to the department in compliance with this subdivision.

(1) Online annual report form. A report must be submitted to the department for each manufacturer annually by March 1st for the previous calendar year, on an online annual report form prescribed by the department. A complete submission must include at least the information required from the manufacturer in ECL § 27-2617(1).

(2) Manufacturer annual reporting fee. A manufacturer must submit a non-refundable annual reporting fee of three thousand dollars (\$3,000) to the department by March 1st.

(3) Annual report update. A manufacturer must update its online annual report form within 30 days of a material change to any information provided to the department in the annual report.

(4) Signature affirming accuracy of the annual report. A manufacturer must provide a signature by an officer, director, or other duly authorized individual affirming the accuracy of the annual report. This signature may be submitted in an electronic format prescribed by the department.

(5) Manufacturer sales data. A manufacturer must provide state sales data to the department in each annual report. A manufacturer that cannot provide accurate state sales data must explain why such data cannot be accurately provided and may estimate state sales data by:

(i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state; or

(ii) making a request, supported by sufficient documentation, to use an alternative method to determine state sales data, subject to approval by the department.

(e) Recycling surcharge. A manufacturer must submit any recycling surcharge required by section 368-3.6 of this Subpart to the department within 30 days of the date of the issuance of the recycling surcharge invoice from the department.

(f) Labeling CEE. A manufacturer must label its CEE with a visible and permanent label that clearly identifies the manufacturer of the CEE.

(g) Retailer notification. A manufacturer must notify retailers that sell or offer for sale the manufacturer's CEE of its registration with the department. Manufacturers must maintain proof of retailer notification and make this documentation available for inspection by the department for a period of three years. Notification to retailers must be provided:

(1) in writing;

(2) clearly indicating the manufacturer's brands (notification on invoices, bills, or other sales documents will be considered acceptable); and

(3) at least annually and each time the manufacturer offers a new brand of CEE for sale with that retailer.

(h) CEE brand sale or license transfer.

(1) CEE brand sale. In the case of a sale of a CEE brand, both the buyer and seller of the CEE brand are manufacturers and must comply with this Subpart. The buyer must assume responsibility for the CEE brand in accordance with this section. Both the seller and buyer must:

(i) notify the department of the change in CEE brand ownership within 30 days;

(ii) update its manufacturer's online registration or annual report form within 30 days, if the buyer or seller is currently registered with the department;

(iii) if the buyer is not already registered with the department, the buyer must submit an online registration form as a manufacturer, pay the manufacturer registration fee, and meet all other requirements of subdivision 368-3.3(a) of this section within 30 days; and

(iv) provide the department with detailed information about the CEE brand sale including, but not limited to, the name of the buyer, general terms of the purchase and sale, responsibility for complying with this Subpart for historical sales, and a list of any brand of CEE involved in the sale.

(2) License transfer of a CEE brand. In the case of a license transfer of a CEE brand, all licensees and the licensor are manufacturers and must comply with this Subpart. A licensee may assume responsibility for the CEE brand for the licensor. All licensees and the licensor must:

(i) notify the department of the transfer of the CEE brand license within 30 days;

(ii) update its manufacturer's online registration or annual report form within 30 days, if licensee or licensor is currently registered with the department;

(iii) if the licensee is not already registered with the department, the licensee must submit an online registration form as a manufacturer, pay the manufacturer registration fee, and meet all other requirements of subdivision 368-3.3(a) of this section within 30 days; and

(iv) provide the department with detailed information of the transfer, including, but not limited to, the names of the licensees, general terms of the licensing agreement, responsibility for complying with this Subpart for historical sales, and a list of any brand of CEE involved in the transfer.

(i) Manufacturer liability. If more than one person meets the definition of a manufacturer of a brand of CEE, any one of these persons may assume responsibility as a manufacturer of that brand of CEE for the obligations under this Subpart. Any and all manufacturers of a brand of CEE are jointly and severally responsible for complying with this Subpart.

(j) Records retention. All records required by this Subpart must be maintained for a period of not less than three years and be made available to the department upon request including, but not limited to, records of electronic waste receipt, storage, and shipment.

(k) Withdrawal and revocation.

(1) Registration withdrawal. A person that no longer meets the definition of a manufacturer must request withdrawal of its registration and must:

(i) submit its request for withdrawal of its registration to the department in writing on its letterhead explaining why they no longer meet the definition of a manufacturer in section 368-3.2 of this Subpart;

(ii) provide additional information and supporting documentation as required by the department to evaluate a registration withdrawal request; and

(iii) continue to meet the requirements of this Subpart for three full calendar years, following the year in which the registration withdrawal request is accepted by the department. For the three calendar years following the department's acceptance of a manufacturer's withdrawal request, the annual reporting fee will be waived by the department. The department may withdraw a manufacturer's registration after the manufacturer has fulfilled the requirements of this section for three calendar years following its request to withdraw.

(2) Revocation of a registration. The department may revoke a manufacturer's registration, pursuant to section 621.13 of this Title, if the manufacturer fails to comply with any of the requirements of sections 368-3.3 or 368-3.5 of this Subpart. A manufacturer must continue to comply with the requirements of this Subpart for three calendar years following the year in which the registration was revoked. For those three calendar years, the annual reporting fee will be waived by the department.

Section 368-3.4 Collective requirements

A manufacturer or group of manufacturers may satisfy the electronic waste acceptance program requirements of section 368-3.5 of this Subpart by participating in a collective registered with the

department. A collective's acceptance program must meet the same requirements as an individual manufacturer's acceptance program for each of its participating manufacturers.

(a) Registration.

(1) Online registration form. A collective must register with the department as a collective by completing and submitting an online registration form, as prescribed by the department.

(2) Collective registration fee. A collective must submit a one-time, non-refundable registration fee of ten thousand dollars (\$10,000) to the department at the time of registration.

(3) Acceptance by the department. A collective's registration is effective upon notification of approval by the department. To receive approval from the department, the collective must demonstrate compliance with the requirements of paragraphs (1) and (2) of this subdivision.

(4) Registration update. A collective must update its online registration or annual report form within 30 days of a material change to any registration information provided to the department.

(b) Compliant electronic waste acceptance program. A collective must create and maintain an effective electronic waste acceptance program that is consistent with the requirements of paragraph 368-3.5 of this Subpart and convenient and continuous for the collection, handling, transportation, and recycling or reuse of electronic waste at no cost to consumers. The collective

must not discourage or restrict continuous and convenient acceptance of electronic waste in its acceptance program. A collective must provide a detailed description of the electronic waste acceptance program to the department with its online registration form.

(c) Annual reporting. A collective must submit an annual report to the department in compliance with this subdivision.

(1) Online annual report form. A report must be submitted to the department for the collective annually by March 1st, for the previous calendar year, on an online annual report form prescribed by the department.

(2) Annual report update. A collective must update its online annual report form within 30 days of a material change to any information provided to the department in the annual report.

(3) Signature affirming accuracy of the annual report. A collective must provide a signature by an officer, director, or other duly authorized individual affirming the accuracy of the annual report. This signature may be submitted in an electronic format prescribed by the department.

(d) Records retention. All records required under this Subpart must be maintained for a period of not less than three years and be made available to the department upon request, including, but not limited to, records of electronic waste receipt, storage, and shipment.

(e) Withdrawal and revocation.

(1) Registration withdrawal. A collective that intends to cease operating as a collective, or no longer operates as a collective, must request withdrawal of its registration and must:

(i) notify the department of its request to withdraw, in writing on company letterhead, at least 30 days prior to ceasing operation as a collective and include the date the collective plans to cease operating its electronic waste acceptance program;

(ii) meet the annual reporting requirements of this section for the calendar year in which the collective's registration is withdrawn; and

(iii) notify participating manufacturers in writing at least 30 days prior to the date the collective will cease operation as a collective and provide a copy of such notifications to the department.

(2) Revocation of a registration. The department may revoke a collective's registration, pursuant to section 621.13 of this Title, if the collective fails to comply with any of the requirements of section 368-3.5 of this Subpart. A collective must meet the annual reporting requirements of this section for the calendar year in which the collective's registration was revoked.

Section 368-3.5 Electronic waste acceptance program

(a) A manufacturer, individually or as a member of a collective, must create and maintain an effective electronic waste acceptance program that is both convenient and continuous for the collection, handling, transportation, and recycling or reuse of electronic waste at no cost to any consumer.

(b) A manufacturer, or its collective, must include the following in its electronic waste acceptance program:

(1) Brand acceptance. Continuous collection and acceptance of all brands of the manufacturer's CEE, including discontinued and historical brands of the manufacturer;

(2) One-for-one acceptance. Acceptance of one piece of electronic waste of any manufacturer's brand if offered by a consumer when the consumer purchases the manufacturer's CEE of the same type;

(3) Type acceptance. Acceptance of at least the same types of electronic waste as the manufacturer's CEE, by all program partners and through all acceptance methods provided as part of its acceptance program;

(4) Program partner compliance. Acceptance of electronic waste only through program partners that are in compliance with applicable requirements in sections 368-3.7 through 368-3.11 of this Subpart;

(5) Convenient acceptance. Convenient acceptance of electronic waste to at least all counties of the state and all municipalities that have a population of 10,000 or greater. To be considered convenient, an electronic waste acceptance program must include:

(i) a mail-back acceptance method that provides a consumer with all of the following:

‘(a)’ an additional method of acceptance for electronic waste exceeding carrier shipping limitations;

‘(b)’ all required packaging material, free of charge to the consumer, to minimize breakage, including, but not limited to, boxes, envelopes, and package cushioning, as well as free shipping and handling; and

‘(c)’ pick up at the consumer’s location, free of charge, when no other free method of acceptance is offered and the shipping carrier’s drop-off location is not convenient to the consumer, as determined pursuant to paragraph 368-3.5(b)(5);

(ii) electronic waste collection events that are offered at a time, date, and for a duration appropriate to maximize participation, and conducted in compliance with the electronic waste collection event requirements of section 368-3.12 of this Subpart;

(iii) acceptance at permanent site and facility locations that must accept electronic waste from consumers during normal business hours, and are in compliance with the applicable requirements of sections 368-3.8, 368-3.9, and 368-3.10 of this Subpart; or

(iv) electronic waste pick-up at a consumer's location, within 30 days of a consumer's request, free of charge, when no other free and convenient acceptance method is provided to the consumer;

(6) Effective acceptance. Acceptance that is effective must encourage consumers to use the method of acceptance and be monitored, tracked, and documented by the manufacturer, or its collective, on a quarterly basis to show the frequency of use by consumers in locations where the method is offered. Documentation of the quarterly monitoring and tracking must include weight of electronic waste accepted in each county and municipality with a population of 10,000 or greater, as well as each acceptance method offered. This documentation must be made available to the department upon request;

(7) Effective acceptance of televisions and monitors. Beginning January 1, 2022, and annually thereafter, acceptance that is effective for a current manufacturer of televisions or monitors must provide for the collection through its acceptance program of, at a minimum, a percentage of its acceptance standard in televisions or monitors that is equal to the percentage of television or monitor sales from its three-year average sales data reported to the department;

(8) Continuous acceptance of electronic waste. Acceptance that is maintained and implemented for the entire calendar year, even if the manufacturer meets or exceeds its acceptance standard before the end of the calendar year. A manufacturer, or its collective, must demonstrate program continuity upon request by the department;

(9) Acceptance program partner notification. Annual notification to all program partners, and persons conducting collection events on its behalf, that electronic waste from consumers must be accepted in compliance with this section;

(10) Payment of program costs. Payment of all costs associated with the implementation of its acceptance program, including, but not limited to, all costs for the collection, handling, transportation, roll-off, trailer and container fees, environmental fees, partial load charges, storage fees, and recycling or reuse of electronic waste incurred by all persons involved in the implementation of the acceptance program.

(11) Acceptance at no charge. A program partner must not charge any consumer, municipality, collection site, or consolidation facility for the collection, handling, transportation, and recycling or reuse of electronic waste that is accepted as part of an electronic waste acceptance program but may charge for the acceptance of electronic waste from a business consumer or for providing a premium service;

(12) Acceptance of broken or damaged electronic waste. Acceptance for recycling of broken or damaged electronic waste, including CRT-containing electronic waste with or without scrap metal attached, from which incorporated assemblies, sub-assemblies, component materials, wiring, circuitry and commodities have not been completely removed;

(13) A public education program. A public education program intended to inform and educate consumers about its acceptance program, encourage the acceptance program's use, and must include, at a minimum:

(i) an easily accessible and up-to-date public education program website detailing a manufacturer's responsibilities to consumers. A manufacturer must provide a clear and direct link to its public education program website from its homepage. The public education program website must:

'(a)' include details on how the consumer may use the acceptance program's free and convenient acceptance methods, including the identification of collection sites and facilities, collectors, and collection events, as well as the hours of operation, CEE types, and brands accepted at each location;

'(b)' include detailed instructions on how the consumer may use the acceptance program's free and convenient mail-back program, if applicable, demonstrating compliance with subparagraph 368-3.5(b)(5)(i);

‘(c)’ include detailed instructions on how the consumer may use the acceptance program’s free and convenient acceptance methods for both the manufacturer’s brands acceptance required in paragraph 368-3.5(b)(1) and the one-for-one acceptance required in paragraph 368-3.5(b)(2);

‘(d)’ in the case of manufacturers of computers, hard drives, and other CEE that have internal memory on which personal or other confidential data can be stored, provide instructions for how consumers can destroy the data before surrendering the equipment for recycling or reuse; and

‘(e)’ be updated annually, and within 30 days of a material change to the acceptance program;

(ii) a toll-free telephone number and email address to which consumers are able to inquire about electronic waste recycling opportunities. A manufacturer must respond to consumers with an appropriate resolution to any inquiry within 72 hours;

(iii) written information included in or with the equipment manual and offered to consumers at the time of sale of CEE, which provides sufficient information to allow a consumer to understand how to return the equipment for recycling or reuse; and

(iv) a minimum of two public service announcements annually to educate consumers on the manufacturer’s, or its collective’s, acceptance program.

Section 368-3.6 Manufacturer credits and surcharges

(a) Electronic waste acceptance credits. If a manufacturer accepts more electronic waste than its acceptance standard for the calendar year, then the excess weight may be used as electronic waste acceptance credits and may be sold, traded, or banked for up to three calendar years following the year in which the credits were earned.

(1) Each pound of excess electronic waste collected will be equivalent to one credit. Fractions of pounds will be rounded to the nearest whole number.

(2) Credit transactions must be reported to the department in the manufacturer's annual report.

(3) A credit must not be used, purchased, or sold to satisfy an acceptance standard in the same calendar year in which the credit was generated.

(4) No more than 25 percent of a manufacturer's acceptance standard for any calendar year may be satisfied with credits generated in any prior calendar year.

(5) A credit purchased by a manufacturer in a calendar year must be applied to that calendar year's acceptance standard and must not be used to meet subsequent years' obligations.

(6) A credit may only be used to meet a shortfall in electronic waste acceptance and must not be applied in excess of a manufacturer's acceptance standard.

(b) Recycling surcharge. A manufacturer that fails to meet its acceptance standard for the previous calendar year as required by section 368-3.3 of this Subpart, is subject to a recycling surcharge.

(1) The recycling surcharge will be determined by the department as follows:

(i) If a manufacturer accepts at least 90 percent but less than 100 percent of its acceptance standard, the surcharge is 30 cents multiplied by the number of additional pounds of electronic waste that should have been accepted by the manufacturer.

(ii) If a manufacturer accepts at least 50 percent but less than 90 percent of its acceptance standard, the surcharge is 40 cents multiplied by the number of additional pounds of electronic waste that should have been accepted by the manufacturer.

(iii) If a manufacturer accepts less than 50 percent of its acceptance standard, the surcharge is 50 cents multiplied by the number of additional pounds of electronic waste that should have been accepted by the manufacturer.

(2) A registered manufacturer of televisions or monitors will be subject to an additional television and monitor recycling surcharge on any shortfall from the requirement in paragraph 368-3.5(b)(7) of this Subpart, even if its overall collection meets or exceeds its acceptance standard. The television and monitor recycling surcharge will be determined by the department in the same manner as the recycling surcharge outlined in paragraph 368-3.6(b)(1).

(3) The department will invoice a manufacturer for any surcharge owed. Payment is due within 30 days of the date of the invoice.

(4) The department may waive a recycling surcharge if the manufacturer demonstrates it used its best efforts to comply but was unable to meet its acceptance standard for the previous calendar year.

(i) A surcharge waiver application must be submitted to the department by March 1st, for the previous calendar year, on a form prescribed by the department. The surcharge waiver application form must include, but is not limited to:

‘(a)’ details of the acceptance methods provided by the manufacturer’s acceptance program;

‘(b)’ a description of the actions taken by the manufacturer to track and forecast electronic waste collection;

‘(c)’ a description of any actions taken by the manufacturer during the year to increase electronic waste collection; and

‘(d)’ a description of any actions taken by the manufacturer to improve the acceptance program’s public education and outreach.

(ii) If the surcharge waiver application is denied by the department, any surcharge due must be paid within 30 days of the manufacturer’s receipt of the department’s denial.

(iii) A surcharge waiver provided pursuant to this section does not relieve a manufacturer from the obligation to comply with the provisions of this Subpart, except for the payment of a recycling surcharge.

Section 368-3.7 Retailer requirements

A retailer:

(a) must, at the point of sale, provide information to consumers of CEE detailing opportunities for the return and recycling or reuse of CEE for distribution to consumers;

(b) must not sell or offer for sale in the state any CEE unless it has verified that the CEE's manufacturer and brands are registered with the department pursuant to section 368-3.3 of this

Subpart;

(c) may continue to sell already purchased brands of CEE for 180 days after the manufacturer's registration is revoked by the department; and

(d) must provide the department with a current list of manufacturers and brands for the CEE offered for sale by the retailer in the state, upon request.

Section 368-3.8 Electronic waste collection site requirements

No person may operate an electronic waste collection site in the state unless the collection site has been registered with the department and is in compliance with the requirements of this section.

(a) Registration.

(1) Online registration form. Each owner, operator, or person that intends to operate an electronic waste collection site must register the collection site with the department by completing and submitting an online registration form, as prescribed by the department, at least

30 days prior to commencement of operation. Registration of an electronic waste collection site does not require a registration fee.

(2) Acceptance by the department. A collection site's registration is effective upon receiving notification of approval by the department. To receive approval from the department, the owner or operator of a collection site must demonstrate compliance with the requirements of paragraphs (1) and (2) of this subdivision.

(3) Retailers registering multiple collection sites. A retailer operating, or intending to operate, multiple electronic waste collection sites may register all of its collection sites together by providing the name, address, and telephone number of each individual collection site on the online registration form required by paragraph (1) of this subdivision.

(b) Operating requirements. Each owner or operator of an electronic waste collection site must operate the collection site in compliance with the following minimum operating requirements:

(1) implement measures to prevent unauthorized entry and access to the active portion of the collection site at all times;

(2) store electronic waste in a manner that minimizes breakage, protects electronic waste from weather, and prevents release of hazardous materials to the environment, and store electronic waste at the collection site in either:

- (i) a fully enclosed building with a roof, floor, and walls; or
 - (ii) a secure, enclosed container such as a shipping container, box, truck, or trailer;
- (3) immediately clean up electronic waste that is broken or shows evidence of breakage, leakage, or damage that could cause the release of a hazardous waste constituent to the environment, immediately place it in a sound and closed container that is appropriate for storing the potential hazardous waste constituent, and properly manage it in accordance with Part 370 of this Title;
- (4) remove electronic waste from the collection site within one year of the receipt of the waste at the collection site;
- (5) inform and train all persons who handle or have responsibility for managing electronic waste at the collection site about the proper handling and emergency procedures appropriate for the type or types of electronic waste handled at the collection site;
- (6) maintain all records of electronic waste receipt, storage, and shipment required under this Subpart on site for a period of not less than three years and make these records available to the department for inspection upon request including, but not limited to, records identifying the persons from which electronic waste and component materials were received from and to whom they were shipped;

(7) provide the department, including its employees, agents, and representatives, with access at all reasonable times during normal business hours to enter and inspect any collection site, including, but not limited to, any property or premises proposed for a registration as a collection site;

(8) for any electronic waste collection site that is a program partner of a manufacturer's or collective's electronic waste acceptance program, must accept all electronic waste in accordance with that acceptance program; and

(9) for any electronic waste collection site that is not a program partner of a manufacturer's or collective's electronic waste acceptance program, post on site conspicuous signage no smaller than 8.5 inches by 11 inches, as well as post a notice on its website, if applicable, containing language that states, "For free and convenient electronic waste recycling options, please visit the NYS Department of Environmental Conservation's website." The current Uniform Resource Locator (URL) address, or website address, must also be provided in such notice.

(c) Acceptance at no charge. Each owner or operator of a collection site that is participating in an electronic waste acceptance program must not charge for the acceptance of electronic waste from consumers, but may charge for the acceptance of electronic waste from business consumers and for providing a premium service.

(d) Annual reporting. The owner or operator of a collection site must submit an annual report to the department in compliance with this subdivision.

(1) Online annual report form. A report must be submitted to the department for the collection site annually by March 1st for the previous calendar year on an online annual report form as prescribed by the department. A complete submission must include at least the information required about the collection site in ECL § 27-2613(1)(b).

(2) Annual report update. The owner or operator of a collection site must update its online annual report form within 30 days of a material change to any information provided to the department in the registration or annual report.

(3) Signature affirming accuracy of the annual report. The owner or operator of a collection site must provide a signature by an officer, director, or other duly authorized individual affirming the accuracy of the annual report. This signature may be submitted in an electronic format prescribed by the department.

(e) Collection event notification. The owner or operator of a collection site who plans to hold an electronic waste collection event at its collection site must comply with all collection event requirements in section 368-3.12 of this Subpart.

(f) Withdrawal and revocation.

(1) Registration withdrawal. Each owner or operator that intends to cease operations at its collection site, or has ceased operations at its collection site, must request withdrawal of its registration from the department and must:

(i) submit a final annual report to the department in compliance with the requirements of subdivision 368-3.8(d) of this section for at least the calendar year in which the collection site's registration was withdrawn; and

(ii) comply with the closure requirements in subdivision 368-3.8(g) of this section.

(2) Revocation of a registration. The department may revoke the registration of a collection site, pursuant to section 621.13 of this Title, if the owner or operator of a collection site fails to comply with any of the requirements of section 368-3.8 of this Subpart

(i) Each owner or operator of a collection site must submit a final annual report in compliance with the requirements of subdivision 368-3.8(d) of this section for the calendar year in which the collection site's registration was revoked.

(ii) Each owner or operator of a collection site that has its registration revoked must comply with all applicable closure requirements in subdivision 368-3.8(g) of this section.

(iii) If a collection site's registration is revoked, the collection of electronic waste at the collection site must cease immediately.

(g) Closure requirements. Each owner or operator of an electronic waste collection site intending to cease the collection of electronic waste at the collection site must comply with all applicable state and federal solid and hazardous waste requirements and the following closure requirements:

(1) notify the department in writing at least 30 days before the anticipated date of termination of use of the electronic waste collection site;

(2) cease receipt of electronic waste at the collection site by the date of termination of use of the electronic waste collection site, or immediately if registration is revoked;

(3) remove electronic waste from the collection site for proper recycling or reuse within 90 days of the date of termination of use of the electronic waste collection site;

(4) decontaminate the collection site, in accordance with applicable laws and regulations, to ensure the site has been cleaned to the satisfaction of the department in a manner that minimizes

or eliminates all contaminated materials, hazardous waste, or hazardous waste residues to the extent necessary to protect human health and the environment; and

(5) submit a certification to the department within 30 days of completion of all closure requirements that:

(i) all electronic waste related activities have ceased at the collection site;

(ii) all electronic waste at the collection site have been sent for proper recycling or reuse; and

(iii) the collection site has been properly decontaminated.

Section 368-3.9 Electronic waste consolidation facility requirements

No person may operate an electronic waste consolidation facility in the state unless the consolidation facility has been registered with the department and is in compliance with the requirements of this section.

(a) Registration.

(1) Online registration form. Each owner, operator, or person that intends to operate an electronic waste consolidation facility must register the consolidation facility with the

department by completing and submitting an online registration form, as prescribed by the department, at least 30 days prior to commencement of operation.

(2) Consolidation facility registration fee. A one-time, non-refundable registration fee of two hundred fifty dollars (\$250) is required at the time of registration of a consolidation facility.

(3) Acceptance by the department. A consolidation facility's registration is effective upon receiving notification of approval by the department. To receive approval from the department, the owner or operator of a consolidation facility must demonstrate compliance with the requirements of paragraphs (1) and (2) of this subdivision.

(b) Operating requirements. Each owner or operator of an electronic waste consolidation facility must operate the consolidation facility in compliance with the following minimum operating requirements:

(1) implement measures to prevent unauthorized entry and access to the active portion of the consolidation facility at all times;

(2) store electronic waste in a manner that minimizes breakage, protects electronic waste from weather, and prevents release of hazardous materials to the environment, and store electronic waste at the consolidation facility in either:

(i) a fully enclosed building with a roof, floor, and walls; or

(ii) a secure, enclosed container such as a shipping container, box truck, or trailer;

(3) immediately clean up electronic waste that is broken or shows evidence of breakage, leakage, or damage that could cause the release of a hazardous waste constituent to the environment, immediately place it in a sound and closed container that is appropriate for storing the potential hazardous waste constituent, and properly manage it in accordance with Part 370 of this Title;

(4) remove electronic waste from the consolidation facility within one year of the receipt of the waste at the consolidation facility;

(5) inform and train all employees who handle or have responsibility for managing electronic waste about the proper handling and emergency procedures appropriate for the type or types of electronic waste handled at the consolidation facility;

(6) maintain all records of electronic waste receipt, storage, and shipment required under this Subpart on site for a period of not less than three years and make these records available to the department for inspection upon request, including, but not limited to, records identifying the persons to which electronic waste and component materials were received from and to whom they were shipped;

(7) provide the department, including its employees, agents, and representatives, with access at all reasonable times during normal business hours to enter and inspect any consolidation facility, including but not limited to, any property or premises proposed for registration as a consolidation facility;

(8) for any electronic waste consolidation facility that is a program partner of a manufacturer's or collective's electronic waste acceptance program, accept all electronic waste in accordance with that acceptance program;

(9) for any electronic waste consolidation facility also operating as an electronic waste collection site, but that collection site is not a program partner of a manufacturer's or collective's electronic waste acceptance program, must post on site at the consolidation facility conspicuous signage no smaller than 8.5 inches by 11 inches, as well as post a notice on its website, containing language which states, "For free and convenient electronic waste recycling options, please visit the NYS Department of Environmental Conservation's website." The current Uniform Resource Locator (URL) address, or website address, must also be provided in such notice;

(10) implement and maintain an electronic waste tracking system that, at a minimum, identifies:

(i) the date, weight, types, and origin of all electronic waste received at the consolidation facility;

(ii) the date, weight, types, and destination of all electronic waste leaving the consolidation facility; and

(iii) the weight of electronic waste accepted that is allocated to an electronic waste acceptance program by the consolidation facility, including the date, weight, and types of electronic waste received, as well as the electronic waste acceptance program to which the weight was allocated. Consolidation facilities that send any allocated electronic waste for further processing must notify each receiving consolidation facility, recycling facility, or electronic waste collector that the weight of the transferred waste is no longer eligible to be allocated to an acceptance program; and

(11) clearly label all electronic waste with the date that the electronic waste was received at the consolidation facility and a tracking number that corresponds to the consolidation facility's electronic waste tracking system. The label must be at least 4 inches by 6 inches in size, with at least 1-inch font, and must be affixed to each pallet or container of electronic waste.

(c) Operation of combination facilities. The owner or operator of an electronic waste consolidation facility may accept electronic waste in the same manner as an electronic waste collection site if:

(1) the consolidation facility is being operated in compliance with the requirements applicable to electronic waste collection sites in section 368-3.8 of this Subpart; and

(2) the registration approved for the consolidation facility also approved operation as a collection site, which may all be requested by filing a single, joint online registration form, as prescribed by the department.

(d) Acceptance at no charge.

(1) Each owner or operator of a consolidation facility that is participating in an electronic waste acceptance program must not charge for the acceptance of electronic waste from consumers, but may charge for the acceptance of electronic waste from business consumers and for providing a premium service.

(2) An owner or operator of a consolidation facility must not charge any electronic waste collection site or another consolidation facility for costs associated with acceptance of electronic waste that is part of a manufacturer's or collective's acceptance program, including, but not limited to, costs for the collection, handling, transportation, roll-off, trailer and container fees, environmental fees, partial load charges, or storage fees. In addition, an owner or operator of a consolidation facility must not charge for the acceptance of any electronic waste from a consumer that is accepted directly or by way of a collection event identified as part of a manufacturer's or collective's acceptance program.

(e) Collection event notification. The owner or operator of a consolidation facility who plans to hold an electronic waste collection event at its collection site must comply with all collection event requirements in section 368-3.12 of this Subpart.

(f) Annual reporting. The owner or operator of a consolidation facility must submit an annual report for the consolidation facility to the department in compliance with this subdivision.

(1) Online annual report form. A report must be submitted to the department for the consolidation facility annually by March 1st, for the previous calendar year, on an online annual report form as prescribed by the department, for the consolidation facility. A complete submission must include at least the information required about the consolidation facility in ECL § 27-2613(2)(b).

(2) Annual report update. The owner or operator of a consolidation facility must update its online annual report form within 30 days of a material change to any information provided to the department in the registration or annual report.

(3) Signature affirming accuracy of the annual report. The owner or operator of a consolidation facility must provide a signature by an officer, director, or other duly authorized individual affirming the accuracy of the annual report. This signature may be submitted in an electronic format prescribed by the department.

(g) Withdrawal and revocation.

(1) Registration withdrawal. Each owner or operator that intends to cease operations at its consolidation facility, or has ceased operations at its consolidation facility, must request withdrawal of its registration from the department and must:

(i) submit a final annual report to the department in compliance with the requirements of subdivision 368-3.9(f) of this section for at least the calendar year in which the consolidation facility's registration was withdrawn; and

(ii) comply with the closure requirements in subdivision 368-3.9(h) of this section.

(2) Revocation of a registration. The department may revoke the registration of a consolidation facility, pursuant to section 621.13 of this Title, if owner or operator of the consolidation facility fails to comply with any of the requirements of section 368-3.9 of this Subpart.

(i) Each owner or operator of a consolidation facility must submit a final annual report in compliance with the requirements of subdivision 368-3.9(f) of this section for the calendar year in which the consolidation facility's registration was revoked.

(ii) Each owner or operator of a consolidation facility that has its registration revoked must comply with all applicable closure requirements in subdivision 368-3.9(h) of this section.

(iii) If a consolidation facility's registration is revoked, the collection of electronic waste at the consolidation facility must cease immediately.

(h) Closure requirements. Each owner or operator of an electronic waste consolidation facility intending to cease operations at a consolidation facility must comply with all applicable state and federal solid and hazardous waste requirements and the following closure requirements:

(1) notify the department in writing at least 30 days before the anticipated date of termination of use of the electronic waste consolidation facility;

(2) cease receipt of electronic waste at the consolidation facility by the date of termination of use of the electronic waste consolidation facility, or immediately if registration is revoked;

(3) remove electronic waste from the consolidation facility for proper recycling or reuse within 90 days of the date of termination of use of the electronic waste consolidation facility;

(4) decontaminate the consolidation facility, in accordance with applicable laws and regulations, to ensure the site has been cleaned to the satisfaction of the department in a manner that minimizes or eliminates all contaminated materials, hazardous waste, or hazardous waste residues to the extent necessary to protect human health and the environment; and

(5) submit a certification to the department within 30 days of completion of all closure requirements that:

(i) all electronic waste related activities have ceased at the consolidation facility; and

(ii) all electronic waste at the consolidation facility has been sent for proper recycling or reuse; and

(iii) the consolidation facility has been properly decontaminated.

Section 368-3.10 Electronic waste recycling facility requirements

No person may operate an electronic waste recycling facility in the state unless the recycling facility has been registered with the department and is in compliance with the requirements of this section.

(a) Registration.

(1) Online registration form. Each owner, operator, or person that intends to operate an electronic waste recycling facility must register the recycling facility with the department by completing

and submitting an online registration form, as prescribed by the department, at least 90 days prior to commencement of operation.

(2) Recycling facility registration fee. A one-time, non-refundable registration fee of two hundred dollars (\$250) is required at the time of registration of a recycling facility.

(3) Closure plan. A closure plan for the recycling facility must be submitted with the online registration form required in paragraph (1) of this subdivision and must be annually updated and submitted with the annual report form required in subdivision (g) of this section. The closure plan shall identify the steps necessary to close the recycling facility and must address all of the closure requirements in subdivision 368-3.10(i) of this section including the following information:

(i) the amount of electronic waste and component material, by type, to be received, stored, and processed annually and associated storage capacity of each;

(ii) the method of processing, described in detail, of each type of electronic waste and component material that will take place; and

(iii) the maximum available storage capacity for the storage of all electronic waste and component material on-site.

(4) Closure cost estimate. A detailed written closure cost estimate, in current dollars, of the cost of hiring a third party to perform all closure requirements must be included with the submission of the closure plan. During the active life of the recycling facility, the owner or operator must annually submit to the department for review and approval adjusted closure cost estimates, including supporting justification to account for inflation and changes in facility conditions. The closure cost estimate must:

(i) at a minimum, include the cost to load, transport, and dispose of the maximum storage capacity at that facility. Cost estimates must also include or reflect the design, materials, equipment, labor, administration, and quality assurance for closure in accordance with the facility-specific closure plan. Additional financial assurance may be required on a site-specific basis if the potential exists for storage beyond the storage capacity; and

(ii) not incorporate any salvage value that may be realized with the sale of materials, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(5) Financial assurance. After initial review and approval of the registration information including the closure cost estimate, the owner or operator of an electronic waste recycling facility must obtain financial assurance, in accordance with the provisions of subdivisions 360.22(c), (d), and (e) of this Title, in an amount sufficient to cover at least the closure cost estimate provided in the recycling facility's closure plan.

(6) Acceptance by the department. A recycling facility's registration is effective upon receiving notification of approval by the department. To receive approval from the department, the owner or operator of a recycling facility must demonstrate compliance with the requirements of paragraphs (1) through (5) of this subdivision and provide proof of financial assurance.

(b) Operating requirements. Each owner or operator of an electronic waste recycling facility must operate the recycling facility in compliance with the following minimum operating requirements:

(1) implement measures to prevent unauthorized entry and access to the active portion of the recycling facility at all times;

(2) store electronic waste in a manner that minimizes breakage, protects electronic waste from weather, and prevents release of hazardous materials to the environment, and store electronic waste at the recycling facility in either:

(i) a fully enclosed building with a roof, floor, and walls; or

(ii) a secure, enclosed container, such as a shipping container, box truck, or trailer;

(3) immediately clean up electronic waste that is broken or shows evidence of breakage, leakage, or damage that could cause the release of a hazardous waste constituent to the environment,

immediately place it in a sound and closed container that is appropriate for storing the potential hazardous waste constituent, and properly manage it in accordance with Part 370 of this Title;

(4) remove electronic waste from the recycling facility within one year of the receipt of the waste at the recycling facility;

(5) inform and train all employees who handle or have responsibility for managing electronic waste about the proper handling and emergency procedures appropriate for the type or types of electronic waste handled at the recycling facility;

(6) maintain all records of electronic waste receipt, storage, and shipment required under this Subpart on site for a period of not less than three years and make these records available to the department for inspection upon request, including, but not limited to, records for the recycling facility's electronic waste tracking system required by paragraph 368-3.10(b)(4);

(7) provide the department, including its employees, agents, and representatives, with access at all reasonable times during normal business hours to enter and inspect any recycling facility, including, but not limited to, any property or premises proposed for registration as a recycling facility;

(8) for any electronic waste recycling facility that is a program partner of a manufacturer's or collective's electronic waste acceptance program, accept all electronic waste in accordance with that acceptance program;

(9) for any electronic waste recycling facility also operating as an electronic waste collection site, but that collection site is not a program partner of a manufacturer's or collective's electronic waste acceptance program, must post on site at the recycling facility conspicuous signage no smaller than 8.5 inches by 11 inches, as well as post a notice on its website, containing language which states, "For free and convenient electronic waste recycling options, please visit the NYS Department of Environmental Conservation's website." The current Uniform Resource Locator (URL) address, or website address, must also be provided in such notice;

(10) implement and maintain an electronic waste tracking system that, at a minimum, identifies:

(i) the date, weight, types, and origin of all electronic waste received at the recycling facility;

(ii) the date, weight, types, and destination of all electronic waste and electronic waste component materials leaving the recycling facility; and

(iii) the weight of electronic waste accepted that is allocated to an electronic waste acceptance program by the recycling facility, including the date, weight, and types of electronic waste received, as well as the electronic waste acceptance program to which the weight was allocated.

Recycling facilities that send any allocated electronic waste for further processing must notify

each receiving recycling facility or electronic waste collector that the weight of the transferred waste is no longer eligible to be allocated to an acceptance program; and

(11) clearly label all electronic waste and component materials with the date of receipt at the recycling facility and a tracking number that corresponds to the recycling facility's electronic waste tracking system. The label must be at least 4 inches by 6 inches in size, with at least 1-inch font, and must be affixed to each pallet or container of electronic waste and component materials.

(c) Operation of combination facilities. The owner or operator of an electronic waste recycling facility may accept electronic waste in the same manner as an electronic waste collection site or consolidation facility if:

(1) the recycling facility is being operated in compliance with the applicable requirements for an electronic waste collection site in section 368-3.8 of this Subpart or an electronic waste consolidation facility in section 368-3.9 of this Subpart; and

(2) the registration approved for the recycling facility also approved to operate as a collection site or consolidation facility, which may all be requested by filing a single, joint online registration form, as prescribed by the department.

(d) Acceptance at no charge.

(1) Each owner or operator of a recycling facility that is participating in an electronic waste acceptance program must not charge for the acceptance of electronic waste from consumers, but may charge for the acceptance of electronic waste from business consumers and for providing a premium service.

(2) An owner or operator of a recycling facility must not charge any electronic waste collection site or consolidation facility for costs associated with acceptance of electronic waste that is part of a manufacturer's or collective's acceptance program, including, but not limited to, costs for the collection, handling, transportation, roll-off, trailer and container fees, environmental fees, partial load charges, or storage fees. In addition, an owner or operator of a recycling facility must not charge for the acceptance of any electronic waste from a consumer that is accepted directly or by way of a collection event identified as part of a manufacturer's or collective's acceptance program

(e) Reuse.

(1) An owner or operator of a recycling facility engaged in removing CEE from the electronic waste stream for reuse must test and certify, within one year of receipt by the recycling facility, that the CEE intended for reuse is in good working condition for the same purpose for which it was manufactured.

(2) Any CEE that is tested and certified to be in good working order must be offered for sale or donated within one year of its certification.

(3) Harvesting of components from electronic waste is not considered reuse.

(4) The weight of CEE designated for reuse must be reported separately from the weight of electronic waste recycled or sent for recycling in the recycling facility's annual report.

(f) Collection event notification. The owner or operator of a recycling facility who plans to hold an electronic waste collection event at its recycling facility must comply with all collection event requirements in section 368-3.12 of this Subpart.

(g) Annual reporting. The owner or operator of a recycling facility must submit an annual report for the recycling facility to the department in compliance with this subdivision.

(1) Online annual report forms. A report must be submitted to the department for the recycling facility annually by March 1st for the previous calendar year on an online annual report form as prescribed by the department. A complete submission must include at least the information required about the recycling facility in ECL § 27-2613(3)(b).

(2) Annual report update. The owner or operator of a recycling facility must update its online annual report form within 30 days of a material change to any information provided to the department in the registration or annual report.

(3) Signature affirming accuracy of the annual report. The owner or operator of a recycling facility must provide a signature by an officer, director, or other duly authorized individual affirming the accuracy of the annual report. This signature may be submitted in an electronic format prescribed by the department.

(h) Withdrawal and revocation.

(1) Registration withdrawal. Each owner or operator that intends to cease operations at its recycling facility, or has ceased operations at its recycling facility, must request withdrawal of its registration from the department and must:

(i) submit a final annual report to the department in compliance with the requirements of subdivision 368-3.10(g) of this section for at least the calendar year in which the recycling facility's registration was withdrawn; and

(ii) comply with the closure requirements in subdivision 368-3.10(i) of this section and in the facility's closure plan.

(2) Revocation of a registration. The department may revoke the registration of a recycling facility, pursuant to section 621.13 of this Title, if the owner or operator of a recycling facility fails to comply with any of the requirements of section 368-3.10 of this Subpart.

(i) Each owner or operator of a recycling facility must submit a final annual report in compliance with the requirements of subdivision 368-3.10(g) of this section for the calendar year in which the recycling facility's registration was revoked.

(ii) Each owner or operator of a recycling facility that has its registration revoked must comply with all applicable closure requirements in subdivision 368-3.10(i) of this section.

(iii) If a recycling facility's registration is revoked, the collection of electronic waste at the recycling facility must cease immediately.

(i) Closure requirements. Each owner or operator of an electronic waste recycling facility intending to cease the collection and recycling of electronic waste at the recycling facility must comply with all applicable state and federal solid and hazardous waste requirements and the following closure requirements:

(1) notify the department in writing at least 30 days before the anticipated date of termination of use of the recycling facility;

(2) cease receipt of electronic waste at the recycling facility by the date of termination of use of the electronic waste recycling facility, or immediately if registration is revoked;

(3) remove and deliver all electronic waste, component materials, and commodities from the recycling facility to a facility authorized to accept the waste within 90 days of the date of termination of use of the electronic waste recycling facility;

(4) decontaminate the recycling facility, in accordance with applicable laws and regulations, to ensure the site has been cleaned to the satisfaction of the department in a manner that minimizes or eliminates all contaminated materials, hazardous waste, or hazardous waste residues to the extent necessary to protect human health and the environment; and

(5) submit a certification to the department within 30 days of completion of all closure requirements that:

(i) all electronic waste related activities have ceased at the recycling facility;

(ii) all electronic waste at the recycling facility has been sent for proper recycling or reuse;

(iii) the recycling facility has been properly decontaminated;

(iv) all solid and hazardous waste at the recycling facility has been sent for proper recycling, treatment, or disposal; and

(v) includes information on the quantity and destination of all electronic waste, component materials, and commodities.

Section 368-3.11 Electronic waste collector requirements

No person may operate as an electronic waste collector unless the person is registered with the department and is in compliance with the requirements of this section.

(a) Registration.

(1) Online registration form. Each electronic waste collector, or person intending to become an electronic waste collector, must register with the department as a collector by completing and submitting an online registration form, as prescribed by the department, at least 30 days prior to accepting or receiving any electronic waste from a consumer. Registration as an electronic waste collector does not require a registration fee.

(2) Acceptance by the department. An electronic waste collector's registration is effective upon receiving notification of approval by the department. To receive approval from the department,

the collector must demonstrate compliance with the requirements of paragraph (1) of this subdivision.

(b) Acceptance at no charge.

(1) An electronic waste collector must not charge for the acceptance or receipt of electronic waste from consumers if the electronic waste is accepted as part of a manufacturer's or collective's electronic waste acceptance program, but may charge for the acceptance of electronic waste from business consumers and for providing a premium service.

(2) An electronic waste collector must not charge any electronic waste collection site or electronic waste consolidation facility for costs associated with acceptance of electronic waste that is part of a manufacturer's or collective's acceptance program, including, but not limited to, costs for the collection, handling, transportation, roll-off, trailer and container fees, environmental fees, partial load charges, or storage fees. In addition, a collector must not charge for the acceptance of any electronic waste from a consumer that is accepted directly or by way of a collection event identified as part of a manufacturer's or collective's acceptance program.

(c) Annual reporting. A collector must submit an annual report to the department in compliance with this subdivision.

(1) Online annual report form. A report must be submitted to the department for the collector annually by March 1st, for the previous calendar year, on an online annual report form as prescribed by the department.

(2) Annual report update. A collector must update its online annual report form within 30 days of a material change to any information provided to the department in the registration or annual report.

(3) Signature affirming accuracy of the annual report. The collector must provide a signature by an officer, director, or other duly authorized individual affirming the accuracy of the annual report. This signature may be submitted in an electronic format prescribed by the department.

(d) Collection event notification. Any collector who plans to hold an electronic waste collection event must comply with all collection event requirements in section 368-3.12 of this Subpart.

(e) Records retention. All records of electronic waste receipt, storage, and shipment required under this Subpart must be maintained for a period of not less than three years and be made available to the department upon request, including, but not limited to, records identifying the persons from which electronic waste and component materials were received from and to whom they were shipped.

(f) Withdrawal and revocation.

(1) Registration withdrawal. An electronic waste collector that intends to cease accepting or receiving electronic waste, or has ceased accepting or receiving electronic waste, must request withdrawal of its registration from the department and must submit a final annual report to the department in compliance with the requirements of subdivision 368-3.11(c) of this section for at least the calendar year in which the collector's registration was withdrawn.

(2) Revocation of a registration. The department may revoke the registration of an electronic waste collector, pursuant to section 621.13 of this Title, if the collector fails to comply with any of the requirements of section 368-3.11 of this Subpart.

(i) Each collector must submit a final annual report in compliance with the requirements of subdivision 368-3.11(c) of this section for the calendar year in which the collector's registration was revoked.

(ii) If a collector's registration is revoked, the collector must cease accepting or receiving electronic waste from consumers immediately.

(g) Tracking of allocated weight. Each electronic waste collector must provide to the department, upon request, information about the weight of electronic waste accepted or received that is allocated to an electronic waste acceptance program by the collector, including the date, weight, and types of electronic waste accepted or received, as well as the electronic waste

acceptance program to which the weight was allocated. A collector that sends any allocated electronic waste for further processing must notify each receiving consolidation facility, recycling facility, or electronic waste collector that such weight is no longer eligible to be allocated to an acceptance program.

Section 368-3.12 Electronic waste collection event requirements

Any person conducting an electronic waste collection event must:

(a) notify the department in writing at least 30 days before each collection event is to be held, on a form prescribed by the department;

(b) not charge for the acceptance of electronic waste from consumers if the electronic waste is collected as part of a manufacturer's or collective's electronic waste acceptance program, but may charge for the acceptance of electronic waste from business consumers and for providing a premium service;

(c) coordinate with the officials of the local municipality and county where the collection event will be held and provide advance notification to the municipality and county, at least 30 days before any collection event, including, but not limited to, information on the date, time, and address of the collection event, as well as the types of CEE to be collected; and

(d) provide for a minimum of four public service announcements through local radio, print, or online media advertisements at least seven days before the collection event, and include at least the following information: date, time, and address of the collection event, as well as the types of CEE to be collected if the electronic waste will be collected as part of a manufacturer or collective electronic waste acceptance program.

Section 368 - 3.13 Waste transporter and waste management facility requirements

(a) Waste transporter requirements. Each person engaged in the transport of solid waste for delivery to a solid waste management facility must provide written information annually on the proper methods for the recycling of electronic waste, to any person who utilizes its waste transporter services.

(b) Solid waste management facility requirements. An owner or operator of a solid waste management facility in the state must annually educate users of its facility on the proper methods for the management of electronic waste in accordance with clause 360.19(c)(1)(v)(‘a’).

(c) Hazardous waste management facility requirements. An owner or operator of a hazardous waste management facility in the state must annually educate users of its facility on the proper methods for the management of electronic waste as follows:

(i) provide written information annually to potential users of the facility on the proper methods of recycling electronic waste;

(ii) maintain written information on site and provide the information to users of the facility upon request; and

(iii) post signs in conspicuous locations at the facility stating that electronic waste cannot be disposed of at the facility.

Section 368-3.14 Severability

If any provision of this Subpart or its application to any person or circumstance is held to be invalid, the remainder of this Subpart, and the application of that provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.